

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 FREMONT STREET, 21st FLOOR
SAN FRANCISCO, CALIFORNIA 94105

RH05044134

**Fair Claims Settlement Practices Regulations
Response to Comments on Revised Amendments**

Comments RE: 2695.1(g)

Comment No.: 1
Section: 2695.1(g)
Commentator: Keesha-Lu M. Mitra, State Farm Insurance Companies
Date of Comment: March 6, 2006
Type of Comment: Written

Summary of Comment: The proposed section incorrectly includes reference to Insurance Code Section 735.5. The correct reference should be to California Government Code Section 11180 et seq. because these provisions are referenced in Insurance Code Section 790.04.

Response to Comment: The Commissioner has considered this comment and accepts it in part. Whereas the Commissioner believes that the proposed regulation correctly makes reference to Insurance Code Section 735.5 because the regulations are applicable to market conduct exams, he agrees with the commentator that Section 11180 et seq. of the Government Code also applies. This section will be amended to read (added language in italics):

(g) The California Insurance Code provides the commissioner with access to all records of an insurer and the power to examine the affairs of every person engaged in the business of insurance to determine if such person is engaged in any unfair or deceptive act or practice. California Insurance Code Section 790.03(h) requires all persons engaged in the business of insurance to effectuate prompt, fair and equitable settlements of claims and to otherwise process claims in a fair and reasonable manner. The Department considers the use of reliable information to be an essential element of the fair and equitable settlement of claims. The fact that information, data or statistical methods used or relied upon by a licensee to process or establish the value of insurance claims is obtained through a third party source shall not absolve the licensee of its legal responsibility to comply with these regulations or to effectuate prompt, fair and equitable settlements of claims. Failure of a licensee to provide the commissioner with requested information sufficient to examine the licensee's claims handling practices may justify a finding that the licensee was in non-compliance with these regulations or other applicable insurance code provisions. Any and all information received pursuant to the Department's request shall be given confidential treatment, as provided in California Insurance Code section 735.5 and California Government Code Section 11180 et seq. When processing or establishing the value of a claim, a licensee shall not be responsible for

the accuracy of information provided by a governmental entity, unless the licensee has discovered or been notified of the inaccuracy and has continued to use the information.

Comments RE: Section 2695.9(f)

Comment No.: 2
Section: Section 2695.9(f)
Commentator: Douglas B. Jackson, Southwest Claims Service, Inc.
Date of Comment: February 22, 2006
Type of Comment: Written

Summary of comment: Suspects legislature and CDI are misled as to how property claims are adjusted. Insurance industry, properly, ignores the Jefferson case and does not apply fair market value procedures to adjust personal property claims. Commentator prefers to see entire proposed section 2695.9(f) deleted and re-written and prefers depreciation to apply to entire cost, including labor.

Response to comment: The Commissioner considered the comment and rejects it. The minimum coverage for residential property is mandated in CIC 2071. An insurer may provide broader coverage, but not less coverage (CIC 2079). CIC 2071 requires an insurer to settle a claim based on the actual cash value of the “property” at the time of loss but not exceeding the amount it would cost to repair or replace the property with “material” of like kind and quality. Further, the insurer’s settlement options, by statute, include repairing, rebuilding, or replacing the “property destroyed or damaged” with other of like kind and quality. There is no suggestion in this statute that the cost of labor necessary to repair, rebuild, or replace property is subject to depreciation.

Case law has determined that actual cash value, unless otherwise defined, is fair market value. The fair market value of labor can only be determined in today’s dollars. There is no other reasonable standard to consider.

CIC 2051 describes the measure of indemnity for an open policy. Any property policy in which the value of the subject matter is determined after the loss occurs is considered an open policy (CIC 411). The measure of indemnity for determining the actual cash value for a total loss to a structure is the fair market value of the structure at the time of loss or policy limits, whichever is less. For partial losses to structures or the loss of personal property, the actual cash value is the “cost to the insured” to repair, replace or rebuild the thing lost less a fair and reasonable deduction for “physical” depreciation based upon its condition at the time of loss, or policy limits whichever is less. There is no allowance for depreciation of labor in this statute.